

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3623 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

MAHESH JELIYA CHHARA

Versus

STATE OF GUJARAT

Appearance:

Mr.H.R.Prajapati for M/s.Thakkar Associates.

Mr.Neegam Shukila, APP for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 05/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the petitioner's detention order dated 15.4.1996 passed by the Police Commissioner, Ahmedabad City under the Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on the same date and since 15.4.1996 the petitioner is under detention lodged in Rajkot District Jail, Rajkot. The grounds of detention enclosed with the detention order show that the

Detaining Authority has taken into consideration three criminal cases of 1996 under Prohibition Act which were pending investigation against him at the time when the detention order was passed. In these three criminal cases 750 litres country liquor and Ambassador Car, 55 litres of country liquor and 70 litres of country liquor was involved. The first two cases are with DCB, Ahmedabad and the third is of Meghaninagar. After taking note of these criminal cases and the petitioner's involvement therein a reference has been made to the latthakand which has been made in past so as to highlight the consequences of the use of the country liquor. The Detaining Authority has then referred to the statements made by the two witnesses against the petitioner with regard to the incident dated 6.2.1996 and 3.3.1996 showing that the petitioner was engaged in an unauthorised business of the sale of country liquor and has been pressuring the witnesses to store the country liquor and on refusal of the witnesses he uses force against the witness and threatens them in public alongwith his associates and gives beating to such persons in public and on alarming raised by the witness the crowd is there and the petitioner with his associates runs after the people with deadly weapons as a result of which the crowd becomes helter-skelter and an atmosphere of terror is created. It has also been noted by the Detaining Authority that the petitioner along with his associates forcibly takes over the vehicles and uses such vehicles to carry unauthorised liquor and if the vehicle owner resist the petitioner got enraged and beats and threatens the vehicle owners. Because the witnesses have been frightened on account of fear psychosis created by the petitioner and his associates they are not coming forward to file complaints against the petitioner and thus the petitioner has been beating the people publicly and even the daily lives of such witness-persons is disturbed they do not dare to come forward to make report against the petitioner. In all the Detaining Authority has referred such statement made by four witnesses and the Detaining Authority has recorded that the witnesses are afraid of the petitioner and in that case if their identity is disclosed their security was in danger and therefore the witnesses had requested to keep their identity secret. Having noted that the petitioner is engaged in Antisocial activities as above the Detaining Authority has claimed privilege disclosing of the identity of the witnesses under PASA Act, 1985. The Detaining Authority has noted that the petitioner's activities are such that he is required to be detained and even if the petitioner is put under the bond of good conduct along with the surety he may not keep the good

conduct. The Detaining Authority has recorded that the petitioner is a bootlegger and is not going to stop his antisocial activities and his activities have been an abstacle in maintaining the public order. At the time when the detention order was passed the petitioner was in judicial custody and the Detaining Authority has recorded for its satisfaction that the petitioner would not stop his antisocial activities in case he is released on bail.

On the grounds as aforesaid the Detaining Authority was satisfied that the petitioner is responsible for breach of the public order and accordingly the detention order was passed. The present petition is filed challenging the detention order on 14.5.1996 and on 15.5.1996 Rule was issued and the same was made returnable on 24.6.1996 and as usual no reply affidavit of the Detaining Authority has been filed on behalf of the respondents.

The learned Counsel for the petitioner has challenged the detention order on diverse grounds but it is not necessary to deal with all the grounds raised by the learned counsel for the petitioner because there are large number of cases decided by the Apex Court and by this Court in which the view has been taken that the allegations of this nature do not constitute a case of breach of public order so as to warrant the passing of the detention order. Only yesterday this Court has decided the matter after considering several decisions of the Apex Court and the decision rendered by this Court in which it has been held that such allegation do not constitute the case of breach of public order and accordingly the detention orders have been quashed. A reference has been made to the decision rendered by this Court only yesterday in Special Civil Application No. 3879 of 1996 decided on 4.10.1996 wherein detailed order has been passed with reasons after considering the ratio on several cases on the point and for the same reasons I am inclined to hold that the allegations and the material on the basis of which the impugned order dated 15.4.1996 has been passed is a case of breach of law and order only and it is not a case of breach of public order. The impugned detention order cannot be said to be germane to the public order and instead of public order it has been passed on collateral ground of breach of law and order. The detention order therefore cannot be sustained in the eye of law.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 15.4.1996 passed against the petitioner-detenu by the Police

Commissioner, Ahmedabad City is hereby quashed and set aside and it is directed that the petitioner-detenu is set at liberty forthwith if not required in any other case. Rule is made absolute.
